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June 27, 2003

Via First Class Mail

Mr. Ted Lee
Gunn, Lee & Hanor, P.C.
700 North St. Mary's Street
Suite 1500
San Antonio, Texas 78205

RE: Representation of Petroleum Analyzer Company, L.P. and Standard Heater Tube
Our file no. 4093.017

Dear Mr. Lee:

As you undoubtedly recall, our firm represents Petroleum Analyzer Company, L.P. ("PAC"). I know from my conversations with you, Phil Fruin, and Tom McMullen that you also have represented PAC and its predecessors for many, many years. Therefore, you can imagine PAC's dismay to discover your representation of Standard Heater Tube, Inc. and David Morris. In fact, on or about April 27, 2000, you had a conversation with Tom McMullen regarding ways to keep Standard Heater Tube, Inc. from patenting the heater tube. I also had a conversation with you about this and other items on April 28, 2000 after I sent you the Patent and Technology Assignment Agreement proposed by Charlie Hanor. I enclose your May 3, 2000 response for your review.

Since the Al Hundere days, you have been advising our client regarding protection of its intellectual property. You, better than probably anyone else, know the value of the heater tube to PAC. Your firm's participation in helping Standard Heater Tube, Inc. and David Morris patent a product that essentially duplicates Alcor's heater tube is, in our opinion, a conflict of interest of serious magnitude. The damage to PAC if this patent is issued is incalculable.

Our client has asked us to inform you of this conflict. Given this information, we are sure that you will immediately withdraw from representing Standard Heater Tube, Inc. and/or David Morris. The remaining damage to PAC from this situation will still need to be addressed.

We look forward to suggestions from you regarding a resolution that is satisfactory to PAC.

Sincerely,

RICHIE & GUERINGER, P.C.

BY: Katherine J. Walters

Enclosure as stated.

cc: Mr. Tom McMullen *(via facsimile w/enclosure)*
Mr. Jim Hepp *(via facsimile w/enclosure)*

ic: Ms. Gay Gueringer *(firm w/o enclosure)*

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C. Donald Gunn (1936 - 1999)

May 3, 2000

G-4407

Katherine J. Walters
Richie & Guerinqer
100 Congress Avenue, Suite 455
Austin, TX 78701

RE: *Petroleum Analyzer Company, LP v. David L. Morris and Standard Heater Tube, Inc.*, District Court, 288th Judicial District, Bexar County, Texas, Cause No. 2000-CI-01400

Dear Kate:

This letter is a follow-up on our telephone conversation last Friday. I received from you a copy of the proposed license agreement that Charlie Hanor sent to you to be executed between Petroleum Analyzer Company, LP and Standard Heater Tube, Inc. Before I get to the license agreement, let me cover some other items as indicated hereinbelow.

I. Facts

As I understand the facts, David Morris worked for Alcor until sometime in 1989. One of the jobs that David Morris had while an employee of Alcor was to develop other ways of manufacturing the heater tube. The sale of replacement heater tubes constituted approximately 80% of the profits by Alcor, Inc., so it was extremely important to be able to protect the sale of replacement heater tubes. The patent on the machine expired long ago.

One of the methods that David Morris came up with was finishing the heater tubes by a process called burnishing. Apparently, burnishing is a form of polishing. The finish on the heater tubes can be completed in one step in about 20 seconds.

For whatever reason, it was decided that burnishing was not viable and the project was abandoned. Apparently, burnishing would extend the length of the tube and would make shoulders or ridges on the tube that the customers did not like. Therefore, sometime in late 1989 or 1990, Alcor, Inc. abandoned the technology that David Morris was paid to develop. David Morris was terminated in 1989.

Meanwhile, Alcor, Inc. shut down any further attempts to develop the burnishing technique. The machine that was being used to perform the burnishing was sold on the open market, later found by David Morris, and purchased. David Morris has since been attempting to further develop the burnishing technique. I am not sure if there are any new improvements or if it was the same thing that he developed in 1989.

It was established that David Morris stole a set of the prints for the heater tube from Alcor, Inc. Mr. Morris allegedly developed his own prints for the heater tube and never looked at the drawings from Alcor; however, every dimension is identically the same. It is physically impossible to do that without copying. (I can produce expert witnesses that will testify to that fact. Jesse Harris testified to that fact in the prior suit by Barbara Auman.)

The trial date in the above identified case is scheduled for July 17, 2000. If Petroleum Analyzer Company, LP (successor in interest to Alcor, Inc. to this technology) could get some patent protection on the heater tube, they would like to do so. It would be worth money to them because currently all they are relying upon is (a) trade secrets, (b) they are the manufacturer of the equipment and people will probably buy replacement parts from the equipment manufacturer, and (c) it is a complicated procedure any competitor would have to go through to get their product approved.

The attorney representing David Morris and Standard Heater Tube, Inc. is proposing a license agreement as a vehicle to settle the lawsuit with David Morris obtaining a patent on the burnishing technique.

These are the general facts as I understand them to exist at the present time.

II. General Recommendation

DO NOT ENTER INTO THE LICENSE AGREEMENT WITH DAVID MORRIS AND/OR STANDARD HEATER TUBE, INC.! Let me give you an explanation as to why I make this boldly emphasized statement.

A. Rewarding the Thief

David Morris stole from Alcor, Inc. when he took the drawings. When someone steals from you, you normally can get a fairly significant injunctive relief against them. You should win and David Morris should be enjoined from making the heater tubes using the burnishing technique, which belongs to Alcor. Not only did he steal the drawings, but he also stole the technology. To enter into any kind of license agreement with him would be rewarding the thief. That would encourage other people to steal.

B. Disclosure of Trade Secrets

If you follow through on what is being proposed in the license agreement, you would have to prepare and file a patent application that would describe how the heater tubes are made in sufficient detail so a person of ordinary skill in the art could make and practice the invention. This means telling people how to make your heater tubes! Therefore, once the patent issues (or within 18 months under a new statute), everything contained in your patent application will become public. In other words, people can then see what you are doing. If you obtain a patent, they can figure out how to design around the patent. If you obtain a patent, then you have released your trade secret information to the public.

If you decide to file a patent application on the burnishing technique, you will have to disclose the fact that heater tubes have been made in the past and how they were made in the past. In other words, you have to distinguish over what was done in the past (which is prior art and public domain) and how you are improving. Simply by telling what has been done in the past, you may be disclosing confidential trade secret information that people can use against you.

C. Questionable Patent Protection

Further, 35 U.S.C. § 102 provides the following:

> "A person shall be entitled to a patent unless...
> he has abandoned the invention...."

It has been eleven years since the project of burnishing the heater tubes has been shut down. That is long enough that most courts would hold that to be abandonment. I seem to recall a case that said a twelve year unexplained delay was abandonment, but in another case, a five year delay was not abandonment. Those cases are fact sensitive. Frankly, if I was on the other side in a patent infringement suit, I believe I could prove abandonment under these facts which would render any patent you obtain invalid.

Also, any possible coverage that you could obtain (assuming there are later improvements in the burnishing technique) will be narrow. In other words, everything that has been done before is not patentable. The only part that you can obtain a patent on is the improvements. Therefore, any claim coverage would be extremely narrow. (This is assuming you can obtain claim coverage.)

III. Proposed License Agreement

Realizing that I am against and recommending against the proposed license agreement, I have proceeded and reviewed the license agreement and I would like to give you some comments, which I will do in the numbered paragraphs hereinbelow.

1. If the lawsuit is going to be resolved with the license, my recommendation is that everything be incorporated in an Agreed Judgment. In other words, make reference to the lawsuit, the facts are disputed, and the parties are entering into the Agreed Judgment as a settlement of all differences between the parties.

2. The license agreement should include David Morris as a party.

3. You are recognizing in the third WHEREAS clause that "ASSIGNOR possesses proprietary technical information." It is my understanding the proprietary technical information (other than some possible minor improvements recently) belong to Alcor, Inc., now PAC. You just recognized in this WHEREAS clause that not to be true.

4. Referring to paragraph 1, this paragraph should work both ways, not one way.

5. I would not concede in paragraph 3 the patent applications "are owned by ASSIGNOR." If there is something patentable about the burnishing technique, based upon David Morris' work for Alcor, Inc. (and subsequent purchase by PAC), the patentable invention (if it exists) probably belongs to PAC.

6. In paragraph 5, it refers to "ASSIGNOR'S TECHNICAL INFORMATION," which may or may not be patentable including know-how and trade secrets. In other words, you are licensing things other than the patent. If you are licensing things other than the patent, there should be at least some duty to spell out what it is you are licensing. I suspect the reason why it was not spelled out is because there is not much there.

7. Concerning paragraph 6, notice the "IMPROVEMENT" is after the "EFFECTIVE DATE." The effective date is when the agreement is signed. Therefore, we are talking about improvements that have not occurred yet. You don't know if there will ever be any improvements.

8. Concerning paragraph 10, it makes references to certain processes. What are the processes?

20. Referring now to paragraphs 26 and 27, it is impossible to comply with these paragraphs and file the patent applications in question. On the one hand, you are agreeing not to divulge any of the technology information or improvements, but on the other hand, you have previously agreed to diligently pursue patent applications. When you file the patent applications, after a period of time the information is going to become public. That information will contain some (possibly all) of the technical information or improvements.

21. In paragraph 30, the Assignor is representing he has sold rights to the patent (which has not yet been filed) and full authority to enter into the agreement. We already know that to be false. We know that Alcor, Inc. probably owns some rights to the burnishing technique due to David Morris' prior employment by Alcor, Inc. Therefore, that statement in that warranty is false.

22. Referring to paragraphs 31 and 32 in combination, PAC will have the right to file the patent applications, but if they elect not to, David Morris will have the right to file the patent applications and obtain the patents. In that case, David Morris would own the patents.

23. Referring to paragraph 33, notice the noncompetition is for a period of five years. At the end of five years, David Morris may be back in business.

24. Referring to paragraph 35, there is no way of getting out of this agreement until either (a) the last patent expires or (b) all patent applications have been abandoned and the ten years have run for the licensing of the "technology."

25. Referring to paragraph 38, if the agreement is terminated, PAC has just agreed to assign to David Morris all of their technology for making heater tubes. (Now the thief would own it all.)

26. Referring to paragraph 39, the obligations of confidentiality is only for three years. Alcor has kept the technology concerning its heater tubes secret for over thirty years. I would think this should be for a longer period of time.

27. Referring to paragraph 40, you will not be able to sell the company unless you get an agreement by the purchaser to assume the obligations under a license agreement. I don't think you want to do that.

28. Referring to paragraph 43, notice that everything is to be construed and any suits brought in Bexar County. However, that is in conflict with the arbitration as provided for in paragraphs 50 and 51.

29. Paragraph 48 refers to the "heads" of the several articles. There are no "heads" on the various articles.

Kate, as you can see, I am strongly opposed to this proposed settlement with David Morris. It appears to me that Charlie Hanor is blowing smoke at you. It doesn't appear to me that his client really has anything to give. Any settlement would probably include releasing David Morris from any liability in turn for him agreeing to stop any activity on the development of heater tubes using any technology based upon what he was doing at Alcor, Inc. Burnishing is something he learned at Alcor, Inc.

There is a criminal statute where a person can be prosecuted criminally for stealing trade secret information. The stealing of the drawings was the stealing of trade secret information and violated that criminal statute. It may be worth turning in Mr. Morris for possible criminal prosecution under the statute.

Kate, if there is anything else you would like for me to do, please let me know. If the client still wants to enter into some sort of license agreement with David Morris, I would throw away the one that Charlie Hanor prepared and start over again.

Sincerely,

Ted D. Lee /S.A.M.

Ted D. Lee

TDL/sam

cc: Tom McMullen

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